IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.08.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 851 OF 1999

State rep. by
Inspector of Police
'D' Nagar Circle, Pondicherry
through Public Prosecutor at High Court
Madras. .. Appellant/Complainant.

- Vs -

1) Velayutham
2) Dhanusu @ Dhandapani
3) Rajini @ Rajinikanth
4) Hari @ Harikrishnan
5) Sankar .. Respondents/Accused.

Appeal preferred by the State against the acquittal of the respondents passed by the learned II Addl. Sessions Judge, Pondicherry, made in S.C. No. 93 of 1997 dated 30.6.98 as stated therein.

For Appellant : Mr. A.Suriyaprakasam, PP (Pondy)

For Respondents : Mr. A.G.Rajan

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

The State of Pondicherry has brought forth this appeal aggrieved over the acquittal of the respondents in a case of murder by the II Addl. Sessions Judge, Pondicherry in S.C. No.93 of 1997. The accused/respondents stood charged under Sections 148, 449 read with 149 and 302 read with 149 IPC and on trial they were acquitted.

2. The gist of the case of the prosecution as could be seen from the available materials is :-

There was a civil dispute between A-1 and Kandeepan, since deceased, in respect of a landed property, which after trial went in favour of the deceased. Therefore, A-1 was looking out to take revenge on the deceased. A-2 to A-5 were the close friends of A-1 and they shared the common object of murdering the deceased. On 10.5.96, the accused armed with veech aruval and knives were waiting for the arrival of Kandeepan near Iyyappan Institute. At about 7.15 p.m., when Kandeepan came near the institute, A-4 stabbed him on the hip. Immediately Kandeepan ran for his life inside the bakery-cum-residence of P.W.2. When Kandeepan ran inside the bakery, all the accused chased him and attacked him indiscriminately. The

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occurrence was witnessed by P.W.s 1 and 2. P.W.s 4 and 8, who were the sons of the deceased, on coming to know, rushed to the spot and they also claim to have witnessed the occurrence. The accused, thereafter, fled away from the scene of occurrence and Kandeepan was found in a pool of blood.

3. P.W.18, the Circle Inspector of Police, when he was on duty at 8.00 p.m., P.W.1 came to the police station and lodged a complaint, Ex.P-1, on the strength of which a case came to be registered in crime No.86 of 1996 under Section 307 read with 34 IPC. Ex.P-13 is a copy of the printed first information report and the same was despatched to the court. On receiving information that the injured Kandeepan has breathed his last, the crime was altered to one under Section 302 IPC and Ex.P-14 is the express report in the altered crime.

4. P.W.18 took up investigation in the crime, went to the scene of occurrence and prepared an observation mahazar, Ex.P-2 in the presence of witnesses. A rough sketch, Ex.P-15 was also drawn. M.O.s 3 to 5 were recovered under a cover of mahazar. P.W.17, the police photographer was summoned and he took photographs at the place of occurrence. M.O.s 9 to 15 and 23 to 26 are the negatives and M.O.s 16 to 22 and 27 to 30 are the photographs. Following the same, the investigating officer conducted inquest over the dead body of the deceased in the presence of panchayatadars and witnesses and prepared inquest report, Ex.P-16. Thereafter, the dead body was sent to the hospital with a requisition to the doctor to conduct autopsy.

5. On receipt of the requisition, P.W.15, Senior Medical Officer attached to Jipmer Hospital, Pondicherry, conducted autopsy on the dead body of the deceased and found the following injuries :-

> "Injuries (Antemortem) :
>
> I) (a) A lacerated wound is seen present over the left forehead obliquely, roughly in the middle of the left side of the frontal region 10 cms x 2 cms x 1.5 cm deep exposing the lacerated meninges and brain.
>
> (b) A lacerated wound is seen present over the left side of the face extending from the middle of the left eye brow downwards and forwards across the left nostril up to the left side of the chin, 15 cms x 3 cms x bone deep. This lacerated wound is seen extending on the left cheek from the left nostril with two bifurcations, one upwards and other downwards, 4 cms x 0.5 cms and 5 cms x 1 cm respectively.
>
> (c) A lacerated wound is seen present over the right forehead from the frontal region downwards across the orbital region up to the right maxilla 2 cms away from the nostril 12 cms x 3 cms x bone deep.
>
> (d) Lacerated wound is seen present over the right cheek 6 cms x 2 cms x muscle deep 3 cms away from the angle of the mouth. Entire facial skin adjacent to lacerations mentioned above shows contusion.
>
> II) Incised wound are seen present over the following regions of the body :-
>
> (a) Over the left subclavian region 6 cms x 1.5 cm x muscle deep.

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(b) Just below the injury mentioned in II (a) 2.5 cms x 1.5 cm x muscle deep.
(c) Over the front of the chest just below the right shoulder, 7 cms x 2 cms x muscle deep.
(d) Back of the right forearm 5 cms x 1.5 cms x muscle deep situated 7 cms below the elbow joint and 4.5 cms x 1.5 cms x muscle deep situated 8 cms above the wrist joint.
(e) Middle of the sole of the left foot 2 cms x 1 cm x skin deep.
III) Left thumb is seen amputated at the metacarpophalangeal joint with a tag of skin adherent.
IV) Linear contusions dark red in colour are seen present over the following parts of the body :-
(a) between the right nipple and the sternum vertically placed 10 cms x 0.5 cm.
(b) Left hypochondriac region in the anterior axillary line vertically placed 6 cms x 0.5 cm.
(c) just above the left nipple obliquely placed 8 cms x 0.5 cm.
(d) between the left nipple and the sternum vertically placed 11 cm x 0.5 cm.
(e) just above the right shoulder 6 cms x 0.5 cm.
(f) over the right suprascapular region 8 cms x 0.5 cm."

The doctor issued Ex.P-7, the post-mortem certificate opining that the deceased would appear to have died on account of shock and haemorrhage.

6. A requisition was given to the first class Judicial Magistrate, Pondicherry, P.W.16, by the investigating officer requesting him to record the 164 statement of P.W.14. Thereafter, further investigation was taken up by his successor, P.W.19, who arrested all the accused. The accused gave confessional statements pursuant to which A-1 produced M.O.1, A-3 produced M.O.8 and they were seized under a mahazar. The other accused also produced the weapons of crime and they were also seized under different mahazar. After examining some more witnesses and recording their statements and after obtaining the final opinion from the doctor, who conducted autopsy, final report was filed against all the accused/respondents and the case was committed to the court of sessions and necessary charges were framed.

7. In order to substantiate the charges levelled against the accused, the prosecution examined nineteen witnesses and relied on twenty exhibits and thirty-two material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances appearing in the evidence of the prosecution witnesses. They denied all the incriminating circumstances. Though no defence witness was examined, the defence marked one document as Ex.D-1. The trial court, after hearing both sides and on scrutiny of the materials available, acquitted all the accused. Hence the present appeal by the State.

8. The learned Addl. Public Prosecutor appearing for the State in his sincere attempt to assail the judgment of the trial court would submit that the trial court has neither marshalled the evidence proper nor considered the same, but has acquitted the respondents. In the instant case, P.W.s 1 and 2 have been examined as eye witnesses and it is true

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that they have not identified the accused, but their evidence was to some extent available for the prosecution to prove that the occurrence had taken place and the respondents were found at the scene of occurrence at about the time of occurrence. P.W.s 1 and 2 have spoken to that effect. Added further the learned counsel, the medical evidence is in support of the prosecution case. Further, all the material objects have also been recovered from the accused pursuant to the confessional statements given by them. That part of the evidence of the prosecution remains unshaken as regards the weapons of crime seized in pursuance of the confessional statements of the respondents and from this the trial court should have found the truth of the prosecution case. Added further the learned counsel that M.O.2, the knife recovered from A-5, when subjected to chemical analysis, the presence of blood tallying with the blood group of the deceased was found on the weapon of offence. The above circumstances would clinchingly prove the case of the prosecution, but the trial court without considering the aspects of the mater and the evidence in the proper perspective have acquitted the respondents and hence the judgment of the trial court has got to be set aside.

9. The Court heard the learned counsel for the respondents on the above contentions and also perused the recorded evidence, both oral and documentary.

10. In the instant case, it is not in controversy that the deceased Kandeepan, who was attacked at the place of occurrence died shortly thereafter and in order to substantiate the same, the prosecution examined P.W.15, the doctor, who conducted autopsy and marked Ex.P-7, the post-mortem certificate issued by him. The doctor has opined that the deceased died due to shock and haemorrhage. It is also pertinent to point out that the respondents have not disputed the cause of death either before the trial court or before this Court. On the medical evidence we hold that the deceased, Kandeepan, died on account of homicidal violence.

11. In order to substantiate the charges levelled against the accused/respondents, the prosecution marched P.W.s 1 and 2 as eye witnesses. P.W.1 is a Sub-Inspector of Police and P.W.2 is the owner of the bakery-cum-residence where, according to the prosecution, the occurrence had taken place. It is not in dispute that both the witnesses have spoken to the fact about the occurrence that took place in the bakery-cum-residence of P.W.2. It is also pertinent to point out that it was P.W.1, who gave the first information statement to the police on the strength of which a case came to be registered. It is also pertinent to point out that according to his complaint, he has given the physical features of the accused, but at the identification parade, he could not identify the assailants. Apart from that, he could not identify the assailants in court also. Equally P.W.2 also could not identify the assailants. Thus, while the prosecution came forward with a case that P.W.s 1 and 2 were eye witnesses, they could not identify the assailants either during the identification parade or even in the court hall and, therefore, the trial court was perfectly correct in rejecting their evidence.

12. It is true that an occurrence took place during which Kandeepan, the deceased, was attacked and murdered. But unless and until there is proper and legal evidence to connect the assailants with the crime, it will be highly difficult to accept the case of the prosecution. In the

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instant case, from the circumstances brought to the notice of the court, it is to be pointed out that no one has connected the accused/respondents with the crime. Apart from that, the case of the prosecution that the five accused persons were arrested at the same point of time and they gave confessional statements, which were recorded and immediately thereafter they produced the weapons of the crime, which were recovered in the presence of witnesses, is not only too artificial to be believed, but is also too improbable and the entire evidence of the prosecution in this aspect clearly indicate that the recoveries were nothing but planted for the purpose of the case. Even assuming that the recoveries are as shown by the prosecution, that by itself cannot be a circumstance for finding the accused/respondents guilty.

13. Apart from that, the contention of the learned Addl. Public Prosecutor that one of the weapons of crime, which was recovered from A-5 contained blood tallying with the blood group of the deceased and therefore the scientific evidence is in favour of the prosecution case. This single piece of evidence would not suffice to find the accused guilty in a grave case like murder. In the circumstances, as rightly pointed out by the court below, the prosecution has in no way proved the guilt of the accused by connecting the accused with the crime and this Court does not find any reason to interfere with the judgment of acquittal passed by the trial court.

14. In the result, the criminal appeal fails and the same is dismissed. The judgment of acquittal passed by the trial court is confirmed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

GLN

To
1) The II Addl. Sessions Judge, Pondicherry.
2) -Do- Thro' The Principal Sessions Judge, Pondicherry.
3) The Sub Divisional Magistrate, Pondicherry.
4) -Do- Thro' The Chief Judicial Magistrate, Pondicherry.
5) The Secretary to Government of Pondicherry, Law Dept., Pondicherry.
6) The Director General of Police, Pondicherry.
7) The Public Prosecutor of Pondicherry, High Court, Madras.
8) The Inspector of Police, 'D' Nagar Circle, Pondicherry.
+ 1 CC to Public Prosecutor (Pondy) SR 32338

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